

REMARKS

A final office action was mailed on July 31, 2003 in this application. In response, applicant submitted a Notice of Appeal. Applicant's appeal is currently withdrawn in favor of the present Request for Continuing Examination. Claims 1-31 are in the application and stand rejected. Reconsideration is respectfully requested.

Claims 30-31 stand rejected under 35 U.S.C. § 112 on the grounds that the reference to "the lines" was ambiguous. This has been corrected.

The Examiner has rejected claims 1-5, 7, 10, 12-13, 15-16 and 18 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,714,098 to Potter (cited in the initial office action). The Examiner contends that Potter discloses each and every feature of the rejected claims. Applicant respectfully disagrees.

Potter discloses a footwear fitting method wherein a store stocks a set of sample shoes with small increments of length and width and a normal inventory shows with standard shoe sizes. The standard sized shoes have a special interior that can be molded using a molding machine to adjust the size. The best fit for a customer is found relative to the sample shoes. Once the best fit is established, a stock shoe of approximately the correct size is re-formed with the molding apparatus to provide a size and width identical to the selected sample shoe. However, Potter does not disclose providing an inventory of "a plurality of shoes at a point of sale location", each "having a flat inner foot receiving surface having no arch support or other normally provided inner cushioning", as recited in independent claims 1 and 12, as amended. While the Potter reference discloses that the fitting method can be used to select a shoe insert that is close to the desired size, which insert is then remolded to adjust the fit as appropriate, this is not a disclosure of providing an inventory of shoes that do not have the normally provided

inner cushioning, as recited in claims 1 and 12, because the insoles of Potter are designed to supplement normal shoes, not to replace the typically-present cushioning.

Because Potter does not disclose or suggest each and every feature recited in claims 1 and 12, the rejection of these claims as being anticipated by Potter has been traversed and should be withdrawn. The rejection of dependent claims 2-5, 7, 10, 13, 15-16 and 18 is also improper for at least the same reasons.

The deficiency of Potter is not cured by UK Patent Application 2,155,164 to Yates, cited against dependent claims 14 and 21. Accordingly, the rejection of these claims has also been traversed and should be withdrawn.

Claims 22-24 and 30 stand rejected as being obvious over U.S. Patent No. 1,324,267 to Pietuzh in view of Patent No. 2,480,776 to Scholl. The Pietuzh patent discloses a foot measuring device that has width lines symmetrically arranged on the left and right sides of a length measuring guide. The Scholl patent discloses a foot measuring device that includes an arch placement slider 22. The Examiner contends that this is capable of measuring the height of the arch and that it would be obvious to use two such mechanisms on a single measuring device. Applicant disagrees.

Assuming, solely for the sake of argument, that the Scholl patent discloses a mechanism for measuring arch height, Scholl discloses only a single slider 22. There is absolutely no teaching or suggestion in Scholl to provide two separate arch height measuring mechanisms. Indeed, it does not appear that left and right versions of the mechanism in Scholl could even be provided on the same unit without making the unit inoperable.

In contrast to Scholl, independent claim 22 recites "a first mechanism for measuring the height of the arch of the left foot" and a separate "second mechanism opposing the first for

measuring the height of the arch of the right foot." Advantageously, the use of two arch measurement mechanisms on a single foot measurement device, as recited in claim 22, allows the arch height to be measured for both feet without having to use two separate foot measurement devices – one configured for the left foot and one for the right or using a device that is symmetric front to back and which requires an operator to rotate the entire device by 180 degrees in order to measure the opposing foot.

The Examiner's contention that it would have been obvious to modify Scholl to provide two measurement sliders, instead of the single slider as disclosed, is unsupported and is, instead, an impermissible use of hindsight. Accordingly, the rejection of claims 22-24 and 30 as being obvious over Pietuzh in view of Scholl is improper and should be withdrawn.

Claims 25-26, 28-29 and 31 are rejected as being obvious over Patent No. 5, 640,779 to Rolloff in view of Patent No. 2,518,798 to Legg, Jr. The Examiner contends that the device of Rolloff is "capable of" being used in a centerline reference manner and that it would therefore have been obvious to provide width measurements relative to such a centerline as disclosed in Legg, Jr. The applicant respectfully disagrees.

Claim 25 recites "second and third indicia" comprising markings spaced at respective predetermined distances to the left and right of a center axis and is configured for use with the foot centered on the surface of the device. In contrast, the device of Rolloff is intended to be used with one side of the foot pressed against a wall and is designed to allow width measurements only from one side. There is no teaching or suggestion to modifying Rolloff, as suggested by the Examiner, and doing so would be entirely inconsistent with its design. In addition, even if it were proper to modify Rolloff in the suggested manner, which it is not, neither Rolloff nor Legg,

Jr. disclose providing a plurality of scanners to scan an image of the indicia and the foot in three dimensions, including the arch height, as recited in independent claim 25.

Accordingly, the applicant submits that the rejection of independent claim 25 has been traversed and should be withdrawn. Dependent claims 26-29 and 31 are also allowable over the cited art for at least the same reasons.

CONCLUSION

Each and every issue raised in the office action dated July 31, 2003 has been addressed by the above amendments and remarks. A favorable reconsideration is respectfully requested.

However, should the Examiner believe that direct contact with the applicant's representative would advance the progress of the application, the Examiner is invited to telephone the undersigned at the number below.

Respectfully submitted,



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